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PART II — Section 2

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bill was introduced in Lok Sabha on 19th March, 2013:—

BILL NO. 63 OF 2013

A Bill further to amend the Indian Penal Code, the Code of Criminal Procedure, 1973, the Indian Evidence Act, 1872 and the Protection of Children from Sexual Offences Act, 2012.

BE it enacted by Parliament in the Sixty-fourth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

- (1) This Act may be called the Criminal Law (Amendment) Act, 2013.
- (2) It shall be deemed to have come into force on the 3rd day of February, 2013.

Short title and
commencement.

CHAPTER II

AMENDMENTS TO THE INDIAN PENAL CODE

2. In the Indian Penal Code (hereafter in this Chapter referred to as the Penal Code), in section 100, after clause *Sixthly*, the following clause shall be inserted, namely:—

“*Seventhly*.— An act of throwing or administering acid or an attempt to throw or administer acid which may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such act.”

Amendment
of section
100.

Insertion of new sections 166A and 166B.

Public servant disobeying direction under law.

3. After section 166 of the Penal Code, the following sections shall be inserted, namely:—

“166A. Whoever, being a public servant,—

(a) knowingly disobeys any direction of the law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter, or

(b) knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation, or

(c) fails to record any information given to him under sub-section (1) of section 154 of the Code of Criminal Procedure, 1973, in relation to cognizable offence punishable under section 326A, section 326B, section 354, sub-sections (2) and (3) of section 354A, section 354B, section 354C, sub-section (2) of section 354D, section 370, section 370A, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509,

2 of 1974.

shall be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years, and shall also be liable to fine.

Punishment for non-treatment of victim.

166B. Whoever, being in charge of a hospital, public or private, whether run by the Central Government, the State Government, local bodies or any other person, contravenes the provisions of section 357C of the Code of Criminal Procedure, 1973, shall be punished with imprisonment for a term which may extend to one year or with fine or with both.”.

2 of 1974.

Amendment of section 228A.

4. In section 228A of the Penal Code, in sub-section (1), for the words, figures and letters “offence under section 376, section 376A, section 376B, section 376C or section 376D”, the words, figures and letters “offence under section 376, section 376A, section 376B, section 376C, section 376D or section 376E” shall be substituted.

Insertion of new sections 326A and 326B.

5. After section 326 of the Penal Code, the following sections shall be inserted, namely:—

Voluntarily causing grievous hurt by use of acid, etc.

326A. Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses of the treatment of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.

Voluntarily throwing or attempting to throw acid.

326B. Whoever throws or attempts to throw acid on any person or attempts to administer acid to any person, or attempts to use any other means, with the intention of causing permanent or partial damage or deformity or burns or maiming or disfigurement or disability or grievous hurt to that person, shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

Explanation 1.—For the purposes of section 326A and this section, “acid” includes any substance which has acidic or corrosive character or burning nature, that is capable of causing bodily injury leading to scars or disfigurement or temporary or permanent disability.

Explanation 2.—For the purposes of section 326A and this section, permanent or partial damage or deformity shall not be required to be irreversible.’

6. In section 354 of the Penal Code, for the words "shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both", the words "shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine" shall be substituted.

Amendment
of section
354.

7. After section 354 of the Penal Code, the following sections shall be inserted, namely:—

Insertion of
new sections
354A, 354B,
354C and
354D.

'354A. (1) A man committing any of the following acts—

Sexual
harassment
and
punishment
for sexual
harassment.

(i) physical contact and advances involving unwelcome and explicit sexual overtures; or

(ii) a demand or request for sexual favours; or

(iii) showing pornography against the will of a woman; or

(iv) making sexually coloured remarks,

shall be guilty of the offence of sexual harassment.

(2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

354B. Any man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked in any public place, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.

Assault or use
of criminal
force to
woman with
intent to
disrobe.

354C. Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

Voyeurism.

Explanation 1.—For the purpose of this section, "private act" includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim's genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public.

Explanation 2.—Where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this section.

354D. (1) Any man who—

Stalking.

(i) follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or

(ii) monitors the use by a woman of the internet, email or any other form of electronic communication; or

(iii) watches or spies on a woman in any manner,

that results in a fear of violence or serious alarm or distress in the mind of such woman, or interferes with the mental peace of the woman, commits the offence of stalking:

Provided that such conduct shall not amount to stalking if the man who pursued it proves that—

(i) it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or

(ii) it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or

(iii) in the particular circumstances such conduct was reasonable and justified.

(2) Whoever commits the offence of stalking shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.’

Substitution of
new sections
370 and 370A
for section
370.

8. For section 370 of the Penal Code, the following sections shall be substituted, namely:—

Trafficking of
person.

‘370. (1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by—

First.— using threats, or

Secondly.— using force, or any other form of coercion, or

Thirdly.— by abduction, or

Fourthly.— by practising fraud, or deception, or

Fifthly.— by abuse of power, or

Sixthly.— by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received,

commits the offence of trafficking.

Explanation 1.— The expression “exploitation” shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.

Explanation 2.— The consent of the victim is immaterial in determination of the offence of trafficking.

(2) Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine.

(3) Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

(4) Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

(5) Where the offence involves the trafficking of more than one minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years, but which may extend to imprisonment for life, and shall also be liable to fine.

(6) If a person is convicted of the offence of trafficking of minor on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

(7) When a public servant or a police officer is involved in the trafficking of any person then, such public servant or police officer shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

370A. (1) Whoever, knowingly or having reason to believe that a minor has been trafficked, engages such minor for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than five years, but which may extend to seven years, and shall also be liable to fine.

Exploitation
of a trafficked
person.

(2) Whoever, knowingly by or having reason to believe that a person has been trafficked, engages such person for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than three years, but which may extend to five years, and shall also be liable to fine.'

9. For sections 375, 376, 376A, 376B, 376C and 376D of the Penal Code, the following sections shall be substituted, namely:—

Substitution of
new sections
for sections
375, 376,
376A, 376B,
376C and
376D.

'375. A man is said to commit "rape" if he—

Rape.

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

under the circumstances falling under any of the following seven descriptions:—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.—With or without her consent, when she is under sixteen years of age.

Seventhly.—When she is unable to communicate consent.

Explanation 1.—For the purposes of this section, "vagina" shall also include *labia majora*.

Explanation 2.—Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1.—A medical procedure or intervention shall not constitute rape.

Exception 2.—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.

Punishment
for rape.

376. (1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine.

(2) Whoever,—

(a) being a police officer, commits rape—

(i) within the limits of the police station to which such police officer is appointed; or

(ii) in the premises of any station house; or

(iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or

(b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or

(c) being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or

(d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or

(e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or

(f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or

(g) commits rape during communal or sectarian violence; or

(h) commits rape on a woman knowing her to be pregnant; or

(i) commits rape on a woman when she is under sixteen years of age;

or

(j) commits rape, on a woman incapable of giving consent; or

(k) being in a position of control or dominance over a woman, commits rape on such woman; or

(l) commits rape on a woman suffering from mental or physical disability; or

(m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or

(n) commits rape repeatedly on the same woman,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

Explanation.—For the purposes of this sub-section,—

(a) "armed forces" means the naval, military and air forces and includes any member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government;

(b) "hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;

(c) "police officer" shall have the same meaning as assigned to the expression "police" under the Police Act, 1861;

(d) "women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children.

376A. Whoever, commits an offence punishable under sub-section (1) or sub-section (2) of section 376 and in the course of such commission inflicts an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, or with death.

Punishment for causing death or resulting in persistent vegetative state of victim.

376B. Whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine.

Sexual intercourse by husband upon his wife during separation.

Explanation.—In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375.

376C. Whoever, being—

(a) in a position of authority or in a fiduciary relationship; or

(b) a public servant; or

(c) superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force, or a women's or children's institution; or

Sexual intercourse by a person in authority.

(d) on the management of a hospital or being on the staff of a hospital, abuses such position or fiduciary relationship to induce or seduce any woman either in his custody or under his charge or present in the premises to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than five years, but which may extend to ten years, and shall also be liable to fine.

Explanation 1.—In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375.

Explanation 2.—For the purposes of this section, *Explanation 1* to section 375 shall also be applicable.

Explanation 3.—"Superintendent", in relation to a jail, remand home or other place of custody or a women's or children's institution, includes a person holding any other office in such jail, remand home, place or institution by virtue of which such person can exercise any authority or control over its inmates.

Explanation 4.—The expressions "hospital" and "women's or children's institution" shall respectively have the same meaning as in *Explanation* to sub-section (2) of section 376.

Gang rape.

376D. Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.

Punishment
for repeat
offenders.

376E. Whoever has been previously convicted of an offence punishable under section 376 or section 376A or section 376D and is subsequently convicted of an offence punishable under any of the said sections shall be punished with imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, or with death.'

Amendment
of section
509.

10. In section 509 of the Penal Code, for the words "shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both", the words "shall be punished with simple imprisonment for a term which may extend to three years, and also with fine" shall be substituted.

CHAPTER III

AMENDMENTS TO THE CODE OF CRIMINAL PROCEDURE, 1973

Amendment
of section 26.

11. In the Code of Criminal Procedure, 1973 (hereafter in this Chapter referred to as the Code of Criminal Procedure), in section 26, in the proviso to clause (a), for the words, figures and letters "offence under section 376 and sections 376A to 376D of the Indian Penal Code", the words, figures and letters "offence under section 376, section 376A, section 376B, section 376C, section 376D or section 376E of the Indian Penal Code" shall be substituted.

2 of 1974.

45 of 1860.

Amendment
of section
54A.

12. In section 54A of the Code of Criminal Procedure, the following provisos shall be inserted, namely:—

"Provided that, if the person identifying the person arrested is mentally or physically disabled, such process of identification shall take place under the supervision of a Judicial Magistrate who shall take appropriate steps to ensure that such person identifies the person arrested using methods that person is comfortable with:

Provided further that if the person identifying the person arrested is mentally or physically disabled, the identification process shall be videographed."

13. In section 154 of the Code of Criminal Procedure, in sub-section (1), the following provisos shall be inserted, namely:—

Amendment
of section
154.

45 of 1860.

"Provided that if the information is given by the woman against whom an offence under section 326A, section 326B, section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer:

Provided further that—

45 of 1860.

(a) in the event that the person against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be;

(b) the recording of such information shall be videographed;

(c) the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub-section (5A) of section 164 as soon as possible."

14. In section 160 of the Code of Criminal Procedure, in sub-section (1), in the proviso, for the words "under the age of fifteen years or woman", the words "under the age of fifteen years or above the age of sixty-five years or a woman or a mentally or physically disabled person" shall be substituted.

Amendment
of section
160.

15. In section 161 of the Code of Criminal Procedure, in sub-section (3), after the proviso, the following proviso shall be inserted, namely:—

Amendment
of section
161.

45 of 1860.

"Provided further that the statement of a woman against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code is alleged to have been committed or attempted shall be recorded, by a woman police officer or any woman officer."

16. In section 164 of the Code of Criminal Procedure, after sub-section (5), the following sub-section shall be inserted, namely:—

Amendment
of section
164.

45 of 1860.

"(5A) (a) In cases punishable under section 354, section 354A, section 354B, section 354C, section 354D, sub-section (1) or sub-section (2) of section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code, the Judicial Magistrate shall record the statement of the person against whom such offence has been committed in the manner prescribed in sub-section (5), as soon as the commission of the offence is brought to the notice of the police:

Provided that if the person making the statement is temporarily or permanently mentally or physically disabled, the Magistrate shall take the assistance of an interpreter or a special educator in recording the statement:

Provided further that if the person making the statement is temporarily or permanently mentally or physically disabled, the statement made by the person, with the assistance of an interpreter or a special educator, shall be videographed.

	(b) A statement recorded under clause (a) of a person, who is temporarily or permanently mentally or physically disabled, shall be considered a statement in lieu of examination-in-chief, as specified in section 137 of the Indian Evidence Act, 1872 such that the maker of the statement can be cross-examined on such statement, without the need for recording the same at the time of trial."	1 of 1872.
Amendment of section 173.	17. In section 173 of the Code of Criminal Procedure, in sub-section (2), in sub-clause (h) of clause (i), for the words, figures and letter "or 376D of the Indian Penal Code", the words, figures and letters "376D or section 376E of the Indian Penal Code" shall be substituted.	45 of 1860.
Amendment of section 197.	18. In section 197 of the Code of Criminal Procedure, after sub-section (1), the following <i>Explanation</i> shall be inserted, namely:— " <i>Explanation.</i> —For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, section 376, section 376A, section 376C, section 376D or section 509 of the Indian Penal Code."	45 of 1860.
Insertion of new section 198B. Cognizance of offence.	19. After section 198A of the Code of Criminal Procedure, the following section shall be inserted, namely:— "198B. No Court shall take cognizance of an offence punishable under section 376B of the Indian Penal Code where the persons are in a marital relationship, except upon <i>prima facie</i> satisfaction of the facts which constitute the offence upon a complaint having been filed or made by the wife against the husband."	45 of 1860.
Amendment of section 273.	20. In section 273 of the Code of Criminal Procedure, before the <i>Explanation</i> , the following proviso shall be inserted, namely:— "Provided that where the evidence of a woman below the age of eighteen years who is alleged to have been subjected to rape or any other sexual offence, is to be recorded, the court may take appropriate measures to ensure that such woman is not confronted by the accused while at the same time ensuring the right of cross-examination of the accused."	
Amendment of section 309.	21. In section 309 of the Code of Criminal Procedure, for sub-section (1), the following sub-section shall be substituted, namely:— "(1) In every inquiry or trial the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded: Provided that when the inquiry or trial relates to an offence under section 376, section 376A, section 376B, section 376C or section 376D of the Indian Penal Code, the inquiry or trial shall, as far as possible be completed within a period of two months from the date of filing of the charge sheet."	45 of 1860.
Amendment of section 327.	22. In section 327 of the Code of Criminal Procedure, in sub-section (2), for the words, figures and letter "or section 376D of the Indian Penal Code", the words, figures and letters "section 376D or section 376E of the Indian Penal Code" shall be substituted.	45 of 1860.
Insertion of new sections 357B and 357C. Compensation to be in addition to fine under section 326A or section 376D of Indian Penal Code.	23. After section 357A of the Code of Criminal Procedure, the following sections shall be inserted, namely:— "357B. The compensation payable by the State Government under section 357A shall be in addition to the payment of fine to the victim under section 326A or section 376D of the Indian Penal Code.	45 of 1860.
Treatment of victims.	357C. All hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under section 326A, 376, 376A, 376B, 376C, 376D or section 376E of the Indian Penal Code, and shall immediately inform the police of such incident."	45 of 1860.

24. In the First Schedule to the Code of Criminal Procedure, under the heading "1.—OFFENCES UNDER THE INDIAN PENAL CODE",—

Amendment
of First
Schedule.

(a) after the entries relating to section 166, the following entries shall be inserted, namely:—

1	2	3	4	5	6
"166A	Public servant disobeying direction under law	Imprisonment for minimum 6 months which may extend to 2 years and fine	Cognizable	Bailable	Magistrate of the first class
166B	Non-treatment of victim by hospital	Imprisonment for 1 year or fine or both	Non-cognizable	Bailable	Magistrate of the first class";

(b) after the entries relating to section 326, the following entries shall be inserted, namely:—

1	2	3	4	5	6
"326A	Voluntarily causing grievous hurt by use of acid, etc.	Imprisonment for not less than 10 years but which may extend to imprisonment for life and fine to be paid to the victim.	Cognizable	Non-bailable	Court of Session
326B	Voluntarily throwing or attempting to throw acid.	Imprisonment for 5 years but which may extend to 7 years and with fine.	Cognizable	Non-bailable	Court of Session.";

(c) for the entries relating to section 354, the following entries shall be substituted, namely:—

1	2	3	4	5	6
"354	Assault or use of criminal force to woman with intent to outrage her modesty.	Imprisonment of 1 year which may extend to 5 years, and with fine.	Cognizable	Non-bailable	Any Magistrate
354A	Sexual harassment of the nature of unwelcome physical contact and advances or a demand or request for sexual favours, showing pronography.	Imprisonment which may extend to 3 years or with fine or with both.	Cognizable	Bailable	Any Magistrate
	Sexual harassment of the nature of making sexually coloured remark.	Imprisonment which may extend to 1 year or with fine or with both.	Cognizable	Bailable	Any Magistrate

1	2	3	4	5	6
354B	Assault or use of criminal force to woman with intent to disrobe.	Imprisonment of not less than 3 years but which may extend to 7 years and with fine.	Cognizable	Non-bailable	Any Magistrate
354C	Voyeurism.	Imprisonment of not less than 1 year but which may extend to 3 years and with fine for first conviction.	Cognizable	Bailable	Any Magistrate
		Imprisonment of not less than 3 years but which may extend to 7 years and with fine for second or subsequent conviction.	Cognizable	Non-bailable	Any Magistrate
354D	Stalking.	Imprisonment of not less than 1 year but which may extend to 5 years and with fine.	Cognizable	Non-bailable	Any Magistrate."

(d) for the entries relating to section 370, the following entries shall be substituted, namely:—

1	2	3	4	5	6
"370	Trafficking of person.	Imprisonment of not less than 7 years but which may extend to 10 years and with fine.	Cognizable	Non-bailable	Court of Session
	Trafficking of more than one person.	Imprisonment of not less than 10 years but which may extend to imprisonment for life and with fine.	Cognizable	Non-bailable	Court of Session
	Trafficking of a minor.	Imprisonment of not less than 10 years but which may extend to imprisonment for life and with fine.	Cognizable	Non-bailable	Court of Session
	Trafficking of more than one minor.	Imprisonment of not less than 14 years but which may extend to imprisonment for life and with fine.	Cognizable	Non-bailable	Court of Session

1	2	3	4	5	6
	Person convicted of offence of trafficking of minor on more than one occasion.	Imprisonment for life which shall mean the remainder of that person's natural life and with fine.	Cognizable	Non-bailable	Court of Session
	Public servant or a police officer involved in trafficking of minor.	Imprisonment for life which shall mean the remainder of that person's natural life and with fine.	Cognizable	Non-bailable	Court of Session
370A	Exploitation of a trafficked child.	Imprisonment of not less than 5 years but which may extend to 7 years and with fine.	Cognizable	Non-bailable	Court of Session
	Exploitation of a trafficked person.	Imprisonment of not less than 3 years but which may extend to 5 years and with fine.	Cognizable	Non-bailable	Court of Session";

(e) for the entries relating to sections 376, 376A, 376B, 376C and 376D, the following entries shall be substituted, namely:—

1	2	3	4	5	6
"376	Rape	Rigorous imprisonment of not less than 7 years but which may extend to imprisonment for life and with fine.	Cognizable	Non-bailable	Court of Session
	Rape by a police officer or a public servant or member of armed forces or a person being on the management or on the staff of a jail, remand home or other place of custody or women's or children's institution or by a person on the management or on the staff of a hospital, and rape committed by a person in a position of trust or authority towards the person raped or by a near relative of the person raped.	Rigorous imprisonment of not less than 10 years but which may extend to imprisonment for life which shall mean the remainder of that person's natural life and with fine.	Cognizable	Non-bailable	Court of Session

1	2	3	4	5	6
376A	Person committing an offence of rape and inflicting injury which causes death or causes the woman to be in a persistent vegetative state.	Rigorous imprisonment of not less than 20 years but which may extend to imprisonment for life which shall mean imprisonment for the remainder of that person's natural life or with death.	Cognizable	Non-bailable	Court of Session
376B	Sexual intercourse by husband upon his wife during separation.	Imprisonment for not less than 2 years but which may extend to 7 years and with fine.	Cognizable (but only on the complaint of the victim)	Bailable	Court of Session
376C	Sexual intercourse by a person in authority.	Rigorous imprisonment for not less than 5 years but which may extend to 10 years and with fine.	Cognizable	Non-bailable	Court of Session
376D	Gang rape.	Rigorous imprisonment for not less than 20 years but which may extend to imprisonment for life which shall mean imprisonment for the remainder of that person's natural life and with fine to be paid to the victim.	Cognizable	Non-bailable	Court of Session
376E	Repeat offenders.	Imprisonment for life which shall mean imprisonment for the remainder of that person's natural life or with death.	Cognizable	Non-bailable	Court of Session.";

(f) in entry relating to section 509, in column 3, for the words "Simple imprisonment for one year, or fine, or both," the words and figure "Simple imprisonment for 3 years and with fine " shall be substituted.

CHAPTER IV

AMENDMENTS TO THE INDIAN EVIDENCE ACT, 1872

- 1 of 1872. **25.** After section 53 of the Indian Evidence Act, 1872 (hereafter in this Chapter referred to as the Evidence Act), the following section shall be inserted, namely:—
- Insertion of new section 53A.
- 45 of 1860. "53A. In a prosecution for an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D or section 376E of the Indian Penal Code or for attempt to commit any such offence, where the question of consent is in issue, evidence of the character of the victim or of such person's previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent."
- Evidence of character or previous sexual experience not relevant in certain cases.
26. For section 114A of the Evidence Act, the following section shall be substituted, namely:—
- Substitution of new section for section 114A.
- 45 of 1860. "114A. In a prosecution for rape under clause (a), clause (b), clause (c), clause (d), clause (e), clause (f), clause (g), clause (h), clause (i), clause (j), clause (k), clause (l), clause (m) or clause (n) of sub-section (2) of section 376 of the Indian Penal Code, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the court that she did not consent, the court shall presume that she did not consent.
- Presumption as to absence of consent in certain prosecution for rape.
- 45 of 1860. *Explanation.*— In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375 of the Indian Penal Code."
27. For section 119 of the Evidence Act, the following section shall be substituted, namely:—
- Substitution of new section for section 119.
- "119. A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court, evidence so given shall be deemed to be oral evidence:
- Witness unable to communicate verbally.
- Provided that if the witness is unable to communicate verbally, the Court shall take the assistance of an interpreter or a special educator in recording the statement, and such statement shall be videographed."
28. In section 146 of the Evidence Act, for the proviso, the following proviso shall be substituted, namely:—
- Amendment of section 146.
- 45 of 1860. "Provided that in a prosecution for an offence under section 376, section 376A, section 376B, section 376C, section 376D or section 376E of the Indian Penal Code or for attempt to commit any such offence, where the question of consent is an issue, it shall not be permissible to adduce evidence or to put questions in the cross-examination of the victim as to the general immoral character, or previous sexual experience, of such victim with any person for proving such consent or the quality of consent."

CHAPTER V

AMENDMENTS TO THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

Amendment
of section 2.

29. In section 2 of the Protection of Children from Sexual Offences Act, 2012 (hereafter in this Chapter referred to as the Protection of Children Act), in sub-section (1), in clause (d), for the words “eighteen years”, the words “sixteen years” shall be substituted. 32 of 2012.

Substitution
of new
section for
section 42.

30. For section 42 of the Protection of Children Act, the following sections shall be substituted, namely:—

Alternate
punishment.

“42. Where an act or omission constitutes an offence punishable under this Act and also under sections 166A, 354A, 354B, 354C, 354D, 370, 370A, 375, 376, 376A, 376C, 376D, 376E or section 509 of the Indian Penal Code, then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment under this Act or under the Indian Penal Code as provides for punishment which is greater in degree.

Act not in
derogation of
any other law.

42A. The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force and, in case of any inconsistency, the provisions of this Act shall have overriding effect on the provisions of any such law to the extent of the inconsistency.”

CHAPTER VI

MISCELLANEOUS

Repeal and
savings.

31. (1) The Criminal Law (Amendment) Ordinance, 2013 is hereby repealed. Ord. 3 of 2013.

(2) Notwithstanding such repeal, anything done or any action taken under the Indian Penal Code, the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872, as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of those Acts, as amended by this Act. 45 of 1860.
2 of 1974.
1 of 1872.

STATEMENT OF OBJECTS AND REASONS

The Criminal Law (Amendment) Bill, 2012 was introduced in the Lok Sabha on 4th December, 2012 in order to provide for stringent punishment for crimes against women, as also to provide for more victim friendly procedures in the trials of such cases. After the horrendous incident of gang rape, which occurred on 16th December, 2012 in Delhi, a Committee, headed by Justice J. S. Verma was set up to make recommendations on amending the various laws to provide for speedy justice and enhanced punishment for offenders in cases of sexual assault of extreme nature. The Justice Verma Committee submitted its Report on 23rd January, 2013.

2. It was felt necessary to bring the revised laws into effect as soon as possible, as any crime against women committed during the period when the law is in making will be punishable only under the existing laws. In view of the urgency of the matter, the Criminal Law (Amendment) Ordinance, 2013 was promulgated on 3rd February, 2013.

3. The Department-related Parliamentary Standing Committee on Home Affairs examined the Criminal Law (Amendment) Bill, 2012 and tabled its Report in Parliament on 1st March, 2013. Keeping in view the recommendations of the Department-related Parliamentary Standing Committee on Home Affairs, the recommendations of Justice Verma Committee and the views and comments received from various quarters including women groups, the Government have drafted the Criminal Law (Amendment) Bill, 2013.

4. The Criminal Law (Amendment) Bill, 2013 seeks to amend the Indian Penal Code, 1860, the Criminal Procedure Code, 1973, the Indian Evidence Act, 1872 and the Protection of Children from Sexual Offences Act, 2012. These amendments seek to:—

(a) make specific provisions for punishment for the offences of causing grievous hurt by acid attack and also for an attempt thereof;

(b) define and prescribe punishment for the offences of stalking, voyeurism and sexual harassment;

(c) widen the definition of rape; broaden the ambit of aggravated rape; and enhance the punishment thereof;

(d) prescribe for punishment extending to the sentence of death, for an offence where in the course of commission of an offence of rape, the offender inflicts any injury which causes the death of the victim or causes the victim to be in a persistent vegetative state;

(e) punish the repeat offenders of rape with imprisonment for life (which shall mean the remainder of the person's natural life), or with death;

(f) prescribe that those convicted for the offence of gang rape shall be punished with rigorous imprisonment for a minimum of twenty years extendable to life (which shall mean the remainder of that person's natural life) and fine; to be paid to the victim to meet the medical expenses;

(g) enhance punishment under sections 354 and 509 of Indian Penal Code;

(h) amend sections 54-A, 154, 160, 161, 164, 198-B, 273, 309 and 327 of the Code of Criminal Procedure, 1973 for providing for women friendly procedures; greater sensitivity to the requirement of physically and mentally disabled persons, under-aged children and old persons in the course of investigation and trial; for speedy trial of rape cases, and better recording of evidence;

(i) provide that all hospitals shall immediately provide first aid and/or medical treatment, free of cost, to the victims of acid attack or rape; and provide for punishment for contravention thereof;

(j) provide that the compensation payable by the State shall be in addition to the payment of fine to the victim;

(k) amend the Indian Evidence Act, 1872 by way of inserting sections 53A, 114A, substitution of section 119 and amendment of section 146 to protect the dignity of women;

(l) amend the Protection of Children from Sexual Offences Act, 2012 so as to harmonise the said Act with the provisions of the Bill.

5. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 15th March, 2013.

SUSHIL KUMAR SHINDE

MEMORANDUM EXPLAINING THE MODIFICATIONS CONTAINED IN THE CRIMINAL
LAW (AMENDMENT) BILL 2013 TO REPLACE THE CRIMINAL LAW
(AMENDMENT) ORDINANCE, 2013

1. The Criminal Law (Amendment) Bill, 2013, which seeks to repeal and replace the Criminal Law (Amendment) Ordinance, 2013, proposes to make the following modifications apart from the modifications of consequential of drafting in nature, in the provisions contained in the said Ordinance, namely:—

THE INDIAN PENAL CODE

2. Section 100: The right to private defence for the protection of the body extending up to causing death in cases relating to acid attack or an attempt to attack with acid was included earlier in the clause secondly but on review it has been considered appropriate to provide as clause *Seventhly* under section 100 of the IPC.

3. Section 166A: The punishment for a public servant disobeying directions under law was initially one year or with fine or both. The punishment has now been modified to six months to two years and with fine. The offence will be cognizable but will remain bailable.

4. Section 166B: This new section has been inserted to ensure that all hospitals whether public or private shall provide immediate emergency treatment free of cost to victims of sexual offences and in case of contravention provides for punishment of one year or with fine or with both. The offence will be non-cognisable and bailable.

5. Section 228A: Consequential changes.

6. Section 326B: The '*Explanation 2 and 3*' have been merged for brevity and clarity.

7. Section 354A: It has been clarified that the gender of the perpetrator can only be a man. The clause (v) under sub-section (1) has been dropped as its contents are subsumed under clause (i) of sub-section (1). In the case of clause (iv) of sub-section (1), it has been clarified that showing pornography has to be against the will of the woman. The maximum punishment envisaged under sub-section (2) has, however, been reduced from five years to three years. The offence has been made bailable in the Bill.

8. Section 354B: It has been clarified that the gender of the perpetrator can only be a man.

9. Section 354C: It has been clarified that the gender of the perpetrator can only be a man. The word 'buttocks' has been substituted with the word 'posterior'. The offence has been made bailable in the Bill for the first offence.

10. Section 354D: It has been clarified that the gender of the perpetrator can only be a man and the gender of the victim can only be of a woman. The various ingredients of the offence have been segregated for better clarity. The clause (iii) of the proviso has been amplified to mean that only the particular conduct attributed to stalking has to be reasonable and justified.

11. Section 370: The definition of 'purpose of exploitation' for which trafficking of human beings is an offence has been enumerated to only sexual exploitation, slavery, servitude or forced removal of organs. The words "prostitution, forced labour or services" have been dropped to restrict the purpose of exploitation. Fine as an additional punishment has been added in sub-section (4), (5), (6) and (7). Sub-section (6) and (7) have been interchanged for a better flow in understanding. In the new sub-section (7) the word 'minor' has

been substituted with the word 'person' to widen the ambit of punishment of a public servant to cover all cases of human trafficking in which he is involved.

12. Section 370A: In both the sub-sections, the phrase 'despite knowing' has been replaced with the word 'knowingly' for better clarity. Punishment has been prescribed for trafficking of a person who knowingly indulge in trafficking of a minor for sexual exploitation under sub-section (1) and a person for sexual exploitation under sub-section (2). Conditions of exploitation related to forced labour and services have been dropped.

13. Section 375: The definition itself has been reverted back to 'rape' from the earlier definition of 'sexual assault' to avoid conflict with the definition of sexual assault given in section 7 of the Protection of Children from Sexual Offences Act, 2012. The perpetrator as well as the victim are now gender specific and are a man and woman, respectively; against the gender neutral specification of perpetrator and victim given in the Ordinance. The actions that can cause rape have been reduced to four instances and the clause (e) 'touches the vagina, penis, anus or breast of the person or makes the person or any other person do the same' has been deleted as the clause per se does not deal with 'penetration'.

The exception of penetration caused due to provision of medical examination or hygiene has been transposed to the end of the section as 'Exception 1' to avoid misinterpretation. Explanation 1 of seven ingredients of rape has been dropped as it is redundant. The earlier Exception relating to sexual intercourse within marriage has been modified to de-criminalise sexual intercourse with the wife not below the age of 15 years (as per original IPC section) instead of the 16 years proposed in the Ordinance to take into consideration marriages where the woman is not a minor and does not opt to void the marriage under the Prevention of Child Marriage Act.

14. Section 376: The phrase 'sexual assault' has been replaced with the word 'rape' in both sub-sections. The word 'by' in the first line of the sub-section (1) has been replaced by 'in' to give it more specificity. Clause (c) of sub-section (2) has been reworded to make it more precise in its meaning. Clause (j) of sub-section (2) has been reworded to mean that rape has been committed on a woman incapable of giving consent. Clause (k) of sub-section (2) has been reworded to give it more wider meaning than the earlier restriction to social and economic dominance to 'the control or dominance' exercised by a perpetrator on a woman. Clause (n) of sub-section (2) has been rephrased to give a more precise meaning of repeated rape of a woman. A new clause has been added to cover offence of rape committed during communal or sectarian violence. The 'Explanation 2' has been dropped as it has been subsumed in the description of the offence of gang-rape.

15. Section 376B: An explanation has been given to describe the acts mentioned in Section 375(a) to (d) which would be considered as "sexual intercourse".

16. Section 376C: The gender of the perpetrator as well as the victim has been specified as man and woman respectively in contrast to the gender neutral position to avoid any ambiguity.

17. Section 376D: The expression 'sexual assault' has been replaced with the expression 'rape'. The gender of the perpetrator as well as the victim has been specified as man and woman respectively.

THE CRIMINAL PROCEDURE CODE, 1973

18. Section 26: Consequential changes.

19. Section 54A: The identification process by a mentally or physically disabled person shall be mandatorily videographed.

20. Section 154: This section has been modified so as to make the recording of information relating to crimes against women by a woman police officer or any woman officer available and the recording such information shall be videographed.

21. Section 160: A police officer shall not require the attendance of witnesses in the police station and will record a statement in the house of a witness if the witness is below "fifteen years" instead of "eighteen years" previously as contained in the Ordinance.

22. Section 161: Statements to be recorded by a police officer relating to crimes against women shall be recorded by a woman police officer or any other available woman officer.

23. Section 173: Consequential changes.

24. Section 197: A new clause has been proposed to make amendment in section 197 Cr. P.C. so as to clarify that no sanction is required for prosecuting a public servant if the offence relates to crime against woman.

25. Section 309: A new clause has been proposed to make amendment in section 309 of the Cr. P.C. so as to provide that the completion of trial of a case of rape u/ss 376 to 376E shall be completed within two months from the date of filing of chargesheet.

26. Section 357B: A new clause has been proposed to make amendment in section 357 of the Cr. P.C. so as to provide that the fine realised u/s 326A or section 376D will be paid to the victim in addition to the compensation payable u/s 357A through the victim compensation scheme.

27. Section 357C: A new clause has been proposed to make amendment in section 357 of the Cr. P.C. so as to provide that all hospital, in public or private domain shall provide first aid or medical treatment free of cost of victims of acid attack or rape and shall inform the police of such an incident compulsorily when approached.

THE INDIAN EVIDENCE ACT

28. No Change.

THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

29. Section 2(1)(d): It is proposed to amend section 2(1)(d) of the **Protection of Children from Sexual Offences Act, 2012** (PoCSO Act) so as to make the definition of child below the age of sixteen years to maintain parity with the clause sixthly of section 375 of IPC which has kept the age of consent as sixteen years.

30. Section 42: Savings clause to provide for higher punishment as applicable as there are a number of similar provisions in the PoCSO Act and the IPC which provide for higher punishments.

31. Section 42A: Overriding effect given to the PoCSO Act.

32. Clause 31 of the proposed Bill deals with repeal and savings of the Ordinance.

T.K. VISWANATHAN,
Secretary-General.